

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PHILIP R. JAGGARD

Appeal No. 1999-2831
Application No. 08/703,435

ON BRIEF

Before STAAB, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 8, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to deployment mechanisms for moving aircraft auxiliary airfoils such as leading edge slats or trailing edge flaps relative to main airfoils (specification, p. 1). A substantially correct copy of the claims under appeal is set forth in the appendix to the appellant's brief.¹

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Burnelli 1933	1,917,428	July 11,
Cole 18, 1984 (Cole '928)	4,471,928	Sep.
Cole 17, 1982 (Cole '987)	0 045 987 (European Patent Application)	Feb.

Claims 1 and 6 to 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Burnelli.

¹ In the appendix, Claim 1, line 13, the phrase "wherein said support rollers are" should be inserted prior to "rotatably."

Claims 2 to 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Burnelli in view of Cole '928 and Cole '987.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 9, mailed June 25, 1998) and the answer (Paper No. 17, mailed December 21, 1998) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 15, filed November 16, 1998) and reply brief (Paper No. 18, filed February 17, 1999) for the appellant's arguments thereagainst.²

OPINION

² In this appeal, we have not considered either the supplemental examiner's answer (Paper No. 19, mailed May 11, 1999) or the appellant's supplemental reply brief (Paper No. 20, filed June 8, 1999) since the rules of practice do not provide for such papers. In fact, 37 CFR § 1.193(b)(1) expressly states that "[a] supplemental examiner's answer is not permitted unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose."

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant in the brief and reply brief and the examiner in the final rejection and answer. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 1 and 6 to 8 under 35 U.S.C. § 102(b).

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claim 1, the only independent claim on appeal, recites a deployment mechanism for moving an aircraft auxiliary airfoil

relative to a main airfoil comprising, inter alia, a support beam extending between the auxiliary airfoil and the main airfoil and having an I-shaped cross section with an upper and a lower boom and a web interconnecting the booms; a rack integrally formed on a surface of one of the booms; a drive pinion rotatably mounted on the main airfoil for engagement with the rack; and at least two support rollers rotatably mounted on the main airfoil for rolling engagement with roller tracks extending along upper and lower surfaces of the beam. Claim 1 further recites "at least one roller track coextending with said rack adjacent thereto, along said beam."

Burnelli's invention relates to aircraft, with particular reference to airfoils. As shown in Figures 1-7, Burnelli

discloses an airfoil having a central supporting section 11, an entering edge section 22 and a trailing edge section 31. The central supporting section 11 includes arcuate track members 15, upper and lower guide rollers 17 and sprockets 18 driven by suitable gearing. The entering edge section 22 and the trailing edge section 31 each includes an arcuate arm 28 (which may be an I-beam in cross section) having rollers 30 for engaging the track members 15 and a rack 29 for meshing with the associated sprocket 18. As can be seen from a review of Figures 1, 2 and 7, the guide rollers 17 do not engage that portion of the arm 28 which contains the rack 29.³

The appellant argues (brief, page 6, and reply brief, pages 6-8) that claim 1 is not anticipated by Burnelli since Burnelli does not teach or suggest the following limitation of claim 1: "at least one roller track coextending with said rack adjacent thereto, along said beam." The examiner has

³ Burnelli is further discussed on pages 1-4 of the appellant's specification.

determined (answer, pages 3-4) that the above-quoted
limitation of claim 1 is readable on⁴ Burnelli.

⁴ The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth

(continued...)

It is our opinion that the above-quoted limitation of claim 1 is not readable on Burnelli for the reasons set forth by the appellant. In that regard, it is our determination that none of the roller tracks disclosed by Burnelli (i.e., the portions of arms 28 engaged by the rollers 17) are coextending⁵ with rack 29 as required by claim 1. Specifically, the roller tracks disclosed by Burnelli do not extend the same duration as the rack 29 since the roller tracks are situated lengthwise of the rack rather than being situated laterally of the rack.

For the reasons set forth above, all the limitations of claim 1 are not met by Burnelli, accordingly, the decision of the examiner to reject claim 1, and claims 6 to 8 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

⁴(...continued)
by the court in Kalman it is only necessary for the claims to "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

⁵ The American Heritage Dictionary, Second College Edition, (1982) defines "coextend" as "[t]o extend or cause to extend through the same space or duration."

The obviousness rejection

We will not sustain the rejection of claims 2 to 5 under 35 U.S.C. § 103.

We have reviewed the references to Cole '928 and Cole '987 applied together with Burnelli in the rejection under 35 U.S.C. § 103 of claims 2 to 5 but find nothing therein which makes up for the deficiencies of Burnelli discussed above. In our view, the only suggestion for modifying Burnelli in the manner proposed by the examiner to meet the above-noted limitation and the additional limitations of claim 2 stems from hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claims 2 to 5 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 and 6 to 8 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 2 to 5 under 35 U.S.C. § 103 is reversed.

REVERSED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JEFFREY V. NASE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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